



COMMONWEALTH of VIRGINIA

Office of the Governor

Robert F. McDonnell
Governor

February 7, 2011

The Honorable Kathleen Sebelius
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Secretary Sebelius:

I join many of my colleagues across the country in writing regarding the fact that the Patient Protection and Affordable Care Act (PPACA) is fundamentally flawed with unconstitutional and inflexible provisions, and should be repealed. We are pleased that the House of Representatives recognized the problems in the PPACA when it voted to repeal the legislation, and are disappointed that the Senate failed to take similar action. A majority of the states are challenging the constitutionality of the PPACA through the judicial system, and are confident that the PPACA will ultimately be struck down by the U.S. Supreme Court.

One thing we can all agree on is the need for certainty regarding the PPACA. Unfortunately, it will take time for the legislative and judicial challenges to the PPACA to run their course. During this time, states are faced with considerable uncertainty. Notably, we must decide whether to operate state exchanges, or let the federal government take on that task, if the bill remains in effect in 2013. The lack of certainty states face requires us to make decisions related to health benefits exchanges and begin the planning process for such exchanges if we hope to meet the rapidly approaching deadlines established by the PPACA. This is particularly difficult as we grapple with difficult budget decisions and skyrocketing Medicaid costs.

In addition to its constitutional infringements, we believe the PPACA wrongly favors dependency on the federal government over personal choice and responsibility, and could ultimately undermine the private insurance market.

If states are required to implement the PPACA, then I join many of my fellow governors in proposing an alternative approach. Instead of forcing states down a path that will result in higher costs and the disruption or discontinuation of insurance coverage for millions of Americans, I request consideration of the following:

- Provide states with flexibility on operating the exchange by giving the freedom to decide which licensed insurers are permitted to offer their products;

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- Provide waivers to the costly mandates in the PPACA and grant states the authority to choose benefit rules that meet the specific needs of our citizens;
- Provide waivers to the provisions of the PPACA that discriminate against consumer-driven health plans, such as health savings accounts;
- Provide authorization to our states to move non-disabled Medicaid beneficiaries into the exchanges for insurance coverage without HHS approval;
- Deliver a comprehensive plan for verifying incomes and subsidy amounts for exchange participants that is fully funded by the federal government and is certified by an independent auditor as workable; and
- Commission a new and objective assessment of how many people will end up in the exchanges and on Medicaid in every state as a result of the legislation. This assessment should include estimates of those individuals who will access the exchanges when their employers drop insurance coverage, and at what potential cost to our states. The study should be conducted by an objective, third-party research organization agreed to by the states. Whatever the quantified fiscal impact on the states, provide federal funding so that the current stifling unfunded mandates on the states are eliminated.

With the flexibility outlined above to accommodate the individual circumstances and needs of states, governors might be able to provide coverage to our citizens without destroying our budgets or perpetuating and magnifying the most costly aspects of our health care system. While we all hope for your agreement, our state will move forward with our own efforts to reform health care regardless of the ultimate fate of the PPACA.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert F. McDonnell", written in a cursive style.

Robert F. McDonnell

RFM/pdw

cc: The Honorable Mitch Daniels
Virginia Congressional Delegation

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bcc: The Honorable Haley Barbour
The Honorable Rick Perry
The Honorable William J. Howell
The Honorable Thomas K. Norment, Jr.
The Honorable Richard L. Saslaw
The Honorable Ward L. Armstrong
The Honorable Ken Cuccinelli
The Honorable William Hazel
The Honorable Jeannmarie Davis
The Honorable J. Jasen Eige
Tucker Martin